IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

REVIEW PETITION NO.2 OF 2006
IN
APPEAL NO.896 OF 2005
IN
NOTICE OF MOTION NO.3036 OF 2004
IN
TESTAMENTARY PETITION NO.698 OF 2004

Dinesh Ramchandra Sawant and another .. Petitioners
v/s.
Shivaji Ramchandra Sawant .. Respondent

Mr. Rajiv Narula i/by M/s. Jhagiani Narula and Associates for the petitioners.

Mr. Suresh Gole i/by M/s. Gole & Co. for the respondent.

CORAM : R.M.LODHA &
D.G. KARNIK, JJ.

DATED : 20TH SEPTEMBER, 2006.

P.C.

We perused the order dated 19th November, 2005, passed by us and considered the submission of the counsel for the review petitioners. The counsel submitted that in the award passed by the
Arbitrator, the finding has been recorded that the subject shop was purchased by deceased Ramchandra Sawant in the name of Dinesh Ramchandra Sawant and, therefore, based on the said

finding that the reliefs prayed for in the notice of motion could not be granted by virtue of section 4 of the Benami Transactions (Prohibition of the Right to Recover Property) Act, 1988. According to the counsel, this aspect was not noticed by us while passing the order dated 19th November, 2005. The submission is wholly misconceived. It is not in dispute that the award passed by the Arbitrator has not been challenged and has attained finality. In the award, it has been specifically held that the subject property was purchased by deceased Ramchandra in the name of his son Dinesh (present petitioner No.1). The property, therefore, has been held to be of deceased Ramchandra in the award. Section 4 of the Act of 1988, in the circumstances, can not be pressed into action.

2. We are, thus, satisfied that our order does not suffer from any error apparent on the face of record. No case for review is made out. Review petition is dismissed.

(R.M.LODHA, J.)

(D.G. KARNIK, J.)